HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.7285 of 2007

Date: September 24, 2007

Between:
1. G.Ramadevi and another. ... Petitioners

And

The Chief Manager,
Corporation Bank, D.No.1-2-235,
G & H, Parklane, M.G.Road,
Secunderabad. ... Respondent

* * *

ORDER:

The matter is coming up for admission on 10.4.2007.

Smt. V.Dyumani, learned counsel representing the respondent bank had taken notice. Heard both the counsel.

2. Sri P.Nagendra Reddy, learned counsel representing the petitioners had taken this court through the contents of the affidavit filed in support of the writ petition and would submit that in view of the fact that the loan amount had been discharged by the petitioners, the relief prayed in the writ petition be granted.

3. Smt. V.Dyumani, learned Standing Counsel representing the respondent bank would submit that it is a fact that the present

petitioners had discharged the amount and the same is hereby recorded.

4. The writ petition is filed for a writ of *Mandamus* declaring proceedings in Crl.M.P.No.955/2007, dated 16.3.2007 on the file of the Chief Metropolitan Magistrate, Hyderabad, as infructuous and not enforceable and consequently direct the respondent bank to redeem the mortgage in respect of the Loan Account No.101/2001 of K.Sudhama and to release all original documents such as sale deed Doc.No.1293/2001, dated 28.7.2001 and Regd. GPA Doc.No.73/1996, dated 10.9.1997 and all other documents pledged with the respondent bank in favour of the petitioners subject to realization of the due amount as agreed in letter No.OR/CHOME/101/01/2006-07, dated 20.3.2007 and pass such other suitable orders.

5. Several facts had been narrated in the affidavit filed in support of the writ petition. It is stated in para 3 that the petitioners were *bona fide* purchasers of the premises (semi constructed house) which was in dilapidated condition in Plot No.2 admeasuring 300 square yards covered by survey Nos.96 to 99 situated at Trimulgheery village, known as Sai Ansh Arcade vide sale deed Document No.903/2003, dated 23.5.2003 registered at Sub-Registrar's Office, Bowenpally, Secunderabad (D.No.P-1) from its owner K.Sudhama, son of late Asha Balaiah, for a total sale consideration of Rs.12,00,000/- out of which a sum of Rs.5,00,000/- was paid through Pay Order Nos.6817236, dated 03.5.2002 and 529112, dated 03.5.2002 and a sum of Rs.7,00,000/- was paid by cash vide receipt dated 02.5.2002 which was duly received and acknowledged by the vendor under the above sale deed

in their favour and delivered peaceful and vacant possession of the schedule house in their favour. It is also stated that the petitioners had purchased a semi-constructed house in Plot No.2 more clearly delineated in schedule, as such the vendor had delivered the original document of notice, tax receipts of Cantonment Board, certified copies of sale deed, encumbrance certificate right from 01-01-1985 to 30-12-2002. It is also stated that it was undertaken by the vendor that he shall handover the original sale deed Doc.No.1293/2001, dated 28.7.2001 in favour of the vendee as and when it was found, as vendor declared himself as the said original deed was misplaced. It is further stated that as per the above registered sale deed they had become absolute owners and possessors of the schedule premises under Transfer of Property

Act and as well as Indian Stamps and Registration Act. It is further stated that after purchasing the schedule premises with semi-constructed house, the petitioners totally demolished all internal and external walls except few pillars and roof constructed thereon, modified the structure of the building and incurred huge expenditure and extended the built up area from 2200 square feet to 4000 square feet with all standard specifications. It is also further stated that the petitioners also got mutated their names in the Revision Record of Cantonment Board, Secunderabad and obtained assessment of the schedule premises in their name and paid up to date house taxes to the Cantonment Board from the date of construction of the house till today. It is also further stated that petitioners found a copy of notice dated 02.4.2005 (D.No.P5) from Corporation Bank issued by W.S.S. Subuddhi/Authorised Officer, Zonal Office, Hyderabad which revealed

that a demand notice dated 11.2.2004 was issued to the borrower and further a possession notice of immovable property under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was issued to the borrowers in the name of Katipally sudhama son of K.Asha Balaiah and K.Revathy, wife of K.Sudhama which further reads that the borrower having failed to repay the amount within 60 days from the date of receipt of notice, the notice was hereby given to the borrower and public in general that the undersigned has taken possession of the property, described herein below in exercise of powers conferred on him under Section 13 (4) of the said Act with Rule 9 of the said Rules on 29th day of April 2005. It was further stated in the said notice that the borrower in particular and the public in general was cautioned not to deal with the property and any dealings with the property would be subject to the charge of the Corporation Bank, M.G.Road, Secunderabad for an amount of Rs.18,80,906/- and interest thereon. The said copy of notice was found on 14.9.2006 and on the same day, the petitioners approached the respondent bank, verified and traced the concerned file and on the very next day they drafted a letter and submitted to the respondent bank through their advocate G.Hanumantha Rao on 15.9.2006 (D.No.P6) requesting the respondent to consider their request permitting the petitioner to pay 50% of the total borrowed principal amount being *bona fide* purchasers and to return the original sale deeds and all other enclosures pledged with the respondent bank and to issue “No Due Certificate”, but the respondent did not respond to the same. However, they had submitted an application in Annexure-A along with covering letter dated 11.01.2007 (D.No.P7) which was acknowledged by the respondent as

well as Banking Ombudsman, Reserve Bank of India, Hyderabad. It is also further stated that in response to their petitions, the Assistant General manager, Corporation Bank Recovery Division, vide letter No.HO/REC/GPN/F.GEN/3080/2006-07, dated 08.02.2007 replied that their representation in the matter of settlement of scheme had been referred to their Zonal Office/Branch and they would be hearing by the zonal office directly, but they had not received any notice of hearing from the zonal office till today. It is also stated that vide letter No.BO(H)/sas/i.4071/2006-2007, dated 14.02.2007 (D.No.P8) addressed by the Assistant Secretary, Office of the Banking Ombudsman, Reserve Bank of India, Hyderabad, informing them that frauds were not covered under Banking Ombudsman Scheme as such their complaint was rejected by the Banking Ombudsman under Clause 13 (i) of BO Scheme and stated that the file was closed. Further it is averred in para 11 that on 17.3.2007 at 1500 hours the respondent came to their residence accompanied by their advocate and supplied them a Xerox copy of warrant in Crl.M.P.No.955/2007, dated 16.3.2007 (D.No.P9) issued by the Court of the Chief Metropolitan Magistrate, Hyderabad, appointing Sri M.Nageswara Rao, as Advocate-Commissioner in the petition filed by the petitioner i.e., respondent bank under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to take physical possession of property and handover the same to the petitioner i.e., respondent bank and also directed to take necessary help from the concerned police by giving notice to him. The commissioner was also further directed to take inventory of items lying in schedule premises, if necessary, by broke

open the lock and also directed to handover the items which were not mortgaged to its owner. It is also further stated that as per the recitals of the sale deed 1293/2001, dated 28.7.2001 (D.No.P10) mortgaged to the respondent bank, the schedule premises covered by sale deed was part and parcel of open plot in survey Nos.96 to 99 admeasuring 300 square yards or 250.8 square metres situated at Trinulgheery village, Secunderabad Cantonment, bounded by East: Road; West: Neighbour's house; North: Open land; South: Radha Madhavi house. As per the above mentioned warrant the respondent was not supposed to touch the premises as movable or immovable which were not mortgaged to the respondent bank, except open plot. As there was no open plot which was alleged to have been mortgaged to the respondent bank, without issuing notice to the petitioners the respondent officials came to their residence and disturbed their peaceful and lawful possession over the schedule premises. It is also further stated that after amicable discussion with the Chief Manager of respondent bank and other officials, they suggested to pay the due amount with simple interest and subject to realization they agreed to return the documents pledged with the respondent bank and in pursuance of the said understanding they had submitted a request to the respondent bank on 20.3.2007 (D.No.P-11) along with four cheques i.e., (i) cheque bearing No.365107, dated 22.3.2007 for Rs.10.00 lakhs (ii) cheque bearing No.029247, dated 23.4.2007 for Rs.10.00 lakhs (iii) cheque bearing No.365108, dated 28.4.2007 for Rs.1,57,080/- and (iv) cheque bearing No.029248, dated 28.4.2007 for Rs.1,57,080/- drawn on ICICI Bank, Karkhana Branch, Secunderabad, in total a sum of Rs.23,14,160/- and on receipt of the above cheques

the respondent bank acknowledged the receipt of the same for crediting the amount under the said Loan Account No.101/2001 in the name of Katipally Sudhama & Mrs.K.Revathy, wife of K.Sudhama including interest clubbed up to 31.3.2007 subject to realization of above mentioned cheques and payment of further interest on the balance amount from 01.4.2007 till the date of final payment. The respondent had no objection to deliver the original sale deed along with other documents in their favour subject to obtaining direction for release of documents from appropriate court of law and further undertook that they shall not return the documents to K.Sudhama or any of his representatives except to the petitioners. The respondent bank had duly presented the cheque No.365107 dated 22.3.2007 for an amount of Rs.10.00 lakhs drawn on ICICI Bank, Karkhana Branch, and the same was honoured. It is also further stated that under the prevailing circumstances, the petitioners had paid a sum of Rs.10.00 lakhs and for balance amount they had already issued cheques in favour of the respondent bank and the respondent bank had duly undertaken to release and return the documents by redeeming mortgage in respect of the schedule premises and all other documents pledged with the bank.

6. Inasmuch as it is stated by the learned Standing Counsel that the amount had been duly discharged, there cannot be any impediment for return of the documents. In the light of the same, the writ petition is hereby allowed and it is needless to say that the petitioners are entitled to for return of the documents as prayed for. No costs.

(P.S.NARAYANA, J.)

Date: September 24, 2007.
BSB